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| 10/531,762   | 09/29/2005  | Edgar Ivo Maria Van Der Heijden | 903-132 PC/T/US     | 4519             |
| 23869 7590 04/28/2010<br>HOFFMANN & BARON, LLP<br>6900 JERICHO TURNPIKE<br>SYOSSET, NY 11791 |             |                                 |                     |                  |
| EXAMINER   |             |                                 |                     |                  |
| SMITH, PRESTON   |             |                                 |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/531,762

**Applicant(s)**

VAN DER HEIJDEN, EDGAR IVO MARIA

**Examiner**

PRESTON SMITH

**Art Unit**

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/17/2005, 4/18/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Claims 16-27 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected apparatus, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/16/2009.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 provides for the use of a foam dispensing device, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 15 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1 (and its dependents), 4, 5, 12, 14, 28 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claims 1 and 15, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 4 and 14 recite the limitation "for example". It is unclear if this limitation is required or not.

Claims 5,12, and 28 recite the limitation, "preferably". It is unclear if this limitation is required or not.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-2, 5, 12-13,15 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Peter C Hildebrand, US-Patent 4,279,938.**

**Regarding claims 1-2, 5, 12, 15,** Hildebrand teaches injecting foam into a beverage inside of a glass in order to create a foam head on the beverage (see abstract and Fig 3. The device of Fig 3 meets the limitations of claim 5). Some of the foam that is injected would naturally float to the surface of the beverage since foam has a lower density than liquids. The injector is in the form of a pump and contains liquid and gas inside of it. The injector would provide both the liquid-foam pump and the air pump since air and liquid inside of they injector would be forced out by the pump feature. The foam is considered to be for human consumption. The device would be used in the manner of claim 15.

**Regarding claim 13**, the positioning of the device in Fig 3 appears to meet the claim limitation.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 3-4 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Edward Schwab, US-Patent 5,342,635.**

**Regarding claims 3-4**, Hildebrand teaches foam as discussed previously however Hildebrand fails to teach the foam comprising syrup. Schwab teaches that edible foams are well known in the art to contain syrup (column 4, line 53). It would have been obvious to add syrup to the foam of Hildebrand in order to make it tastier.

**Claims 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Stephen Cornell, US-Patent 5,848,721.**

**Regarding claims 6-9,** Hildebrand teaches the invention of claim 5 however Hildebrand fails to teach the dispensing tube (the "needle" portion of the syringe or injector) being of a flexible design.

Cornell teaches a container containing liquid wherein the container has two drinking straws that can be used for dispensing liquids (see Fig 2, number 44. The tube or straw has a concertina like constriction, having two rigid parts connected by a flexible part, and being flexible and variable by length). It would have been obvious to combine this feature with Hildebrand and modify the dispensing line of Hildebrand to incorporate the structure of flexible straw of Cornell in order to make the line of Hildebrand less susceptible to breaking and easier to move around in the solution to dispense the foam. Additionally, one of ordinary skill would have recognized the function of a straw and the function of a syringe would be to transport a liquid from one location to another and thus it would have been obvious to interchange one for the other to perform the same task or function.

**Claims 10-11 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938 in view of Micheal J. Simmons, US-patent 4,148,417.**

**Regarding claims 10-11**, the reference teaches the invention of claim 5 however the reference fails to teach a nozzle attached to the end of the dispensing line.

Simmons teaches that nozzles attached to "dispensers" are well known in the art (see Fig 1 and 2). It would have been obvious to modify the end of Hildebrand and make it of a nozzle construction such as Simmons in order to more carefully regulate the foam dispensing and cover the end of Hildebrand. Additionally, nozzles with multiple openings inside are well known (such as a mesh filter on a faucet tap) and thus it would have been obvious to modify the composite invention to include a nozzle with multiple openings in order to provide for the dispersion of a finer foam product.

**Regarding claim 28**, the line does not have a plurality of dispensing lines however Simmons teaches a container with "two lines" (the nozzles are considered to be lines (see Fig 2). It would have been obvious to modify the dispenser of Hildebrand to include this feature in order to allow for more efficient dispensing of foam (more surface area would be covered).

**Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Peter C Hildebrand, US-Patent 4,279,938.**



**Regarding claim 14**, the reference teaches the invention of claim 1 however the reference fails to teach the liquid containing portion of the syringe being of a cardboard container. Cardboard containers with dispensing means are well known (such as milk cartons or juice boxes with a straw. The liquid is stored in the cardboard box and dispensed through the straw of the juice box) and thus one of ordinary skill would have found it obvious to modify the liquid containing portion and make it cardboard since cardboard containers are relatively cheap and this would provide for a means to process and create cheap dispensing injectors.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PRESTON SMITH** whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1782

prs